

Federal Agency Trashes Religious Liberty

By [Bill Donohue](#)

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It is the most anti-First Amendment report issued to date by any agency of the federal government. On September 7, the U.S. Commission on Civil Rights released a scathing assault on religious liberty titled, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*.

The title of [the report](#) is only one of many fundamental errors in the document: the findings and recommendations make it clear that there is no attempt to reconcile any competing rights. Instead, the document says that when there is a conflict between religious liberty and nondiscrimination, the former should be subordinate to the latter. Never mind that religious liberty is enshrined in the First Amendment and the latter right is mostly encoded in statutes.

The lead finding in the report is dismissive of the First Amendment. "Civil rights protections ensuring nondiscrimination, as embodied in the Constitution, laws, and policies, are of preeminent importance in American jurisprudence."

That is factually wrong: laws against discrimination are important, but they are not preeminent. What is preeminent is the first right found in the First Amendment, namely, the right to religious exercise. This agency has now decided to invert these rights. This is indefensible.

The second finding all but guts the meaning of religious exemptions. It holds that when such exemptions are granted

from civil rights laws, e.g., statutes governing race and sexual orientation, they “significantly infringe upon these civil rights.” The obverse is more accurate: the denial of religious exemptions, in most instances, significantly infringe upon the First Amendment.

Rights are not absolute, so when two rights conflict, decisions to favor one over the other must be made; this requires sound jurisprudential reasoning. For example, the Bill of Rights explicitly protects religious liberty, and it says absolutely nothing about gay rights or gay marriage. Why, then, is this federal body awarding preferential treatment to rights nowhere found in the Constitution while diminishing rights plainly encoded in it?

The findings and recommendations both speak about the First Amendment’s “Free Exercise Clause” and the “Establishment Clause.” Such literary casting is factually wrong. Constitutional scholar John Noonan [says it best](#): “There are no clauses in the constitutional provision. Clauses have a subject and a predicate. This provision has a single subject, a single verb, and two prepositional phrases.”

Noonan is not being cute. His point is substantive: the Framers never contemplated disharmony between religious liberty and the establishment of religion. Indeed, these provisions complement each other. The free exercise of religion puts brakes on the power of the federal government to deny religious liberty; the establishment provision puts breaks on the federal government to prescribe religious exercise.

Madison, who authored the First Amendment, did not keep us guessing as to what he meant by the establishment provision: It was designed to stop the establishment of a national church and to prohibit government favoritism of one religion over the other. Moreover, it had no application to the states, which is why state churches existed until the fourth decade of the

nineteenth century.

The rendering offered in the report incorrectly pits the two religious liberty provisions—free exercise and the establishment of religion—against each other. According to this logic, the two rights cancel each other out. This is bad history and lacks common sense. But it does allow the report to erroneously conclude that the establishment provision precludes a robust understanding of the Religious Freedom Restoration Act.

If there were any doubt that this report is a searing indictment of the First Amendment, the statement by the chairman of the U.S. Commission on Civil Rights settles the matter. Martin R. Castro, an Obama appointee, is blunt in his contempt for religious liberty.

“The phrases ‘religious liberty’ and ‘religious freedom’ will stand for nothing except for hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any other form of intolerance.”

Absent from his list of horrors is the real threat to the Constitution: militant secularism. And who is he talking about when he cites “Christian supremacy”? He should man up and be specific. Or is the term “man up” another horror?

Castro then blames religion for slavery. “In our nation’s past religion has been used to justify slavery and later, Jim Crow laws.” Perhaps he missed those classes on the religious basis of the abolitionist movement; or Catholic teachings on natural law; or the efforts of Rev. Martin Luther King, and all the other faith-based opponents of discrimination.

Interestingly, Castro’s remarks are preceded with a quote from John Adams: “The government of the United States is not, in any sense, founded on the Christian religion.” Tell that to the U.S. Supreme Court. In 1892, it ruled that the U.S. “is a

Christian nation.”

Leaving that debate aside, it is undeniably true that the U.S. was founded on the Judeo-Christian ethos. More important, it was Adams who pointedly said that the Constitution was made “only for a moral and a religious people.” This explains why attempts to diminish our religious heritage—including this salvo by the U.S. Commission on Civil Rights—must be resisted.

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